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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. 748

JOGGER MANUFACTURING CORPORATION,
Petitioner-Plaintiff.

vs.

WENDELL H. ROQUEMORE, DOING BUSINESS AS
MULTIGRAPH SALES AGENCY,
Respondent-Defendant.

**MOTION OF PETITIONER FOR LEAVE TO FILE THE
AFFIDAVITS OF E. F. KOENIG AND W. C. DUNLAP
AND TO HAVE SAID AFFIDAVITS CONSIDERED IN
CONJUNCTION WITH THE RECORD HEREIN.**

HOWARD D. MOSES,
Counsel for Petitioner.

CHARLES G. CULVER,
Of Counsel.

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Now comes the petitioner, Jogger Manufacturing Corporation, by Howard D. Moses and Charles G. Culver, its attorneys, and moves the court to grant to the petitioner leave to make the affidavits of Ernest F. Koenig and W. C. Dunlap, marked exhibits T and U respectively, a part of, and be considered in conjunction with the Amended Petition For Permission To Make Application To The District Court For Leave To File a Bill in the Nature of a Bill of Review. As grounds for the granting of said Motion, petitioner attaches the affidavit of Howard D. Moses, and further attaches to the signed copy of this Motion, photostatic copies of the affidavits of Ernest F. Koenig and W. C. Dunlap.

HOWARD D. MOSES and CHARLES G. CULVER,
Attorneys for Petitioner.

STATE OF ILLINOIS }
COUNTY OF COOK } ss

Howard D. Moses, being first duly sworn on oath deposes and says that he is a licensed and practicing attorney in and for the State of Illinois, and duly licensed to practice before the Supreme Court of the United States; that he makes this affidavit in support of the motion filed on behalf of the petitioner in the foregoing proceeding.

Affiant further says that ever since the removal of petitioner's files from the possession of petitioner's former counsel, petitioner and its counsel have made exhaustive efforts to secure evidence of just such character as the affidavits of Ernest F. Koenig and W. C. Dunlap; that it has been impossible for petitioner to secure such evidence before the dates appearing upon the respective affidavits; that because of the inability of the petitioner to secure said affidavits at an earlier date, it was impossible to incorporate said affidavits as a part of the Amended Petition heretofore presented to the United States Circuit Court of Appeals, Seventh Circuit.

Affiant further says that the character of the matters sworn to by Ernest F. Koenig and W. C. Dunlap so conclusively prove the misapprehension of the true facts by the United States Circuit Court of Appeals, Seventh Circuit, and so convincingly corroborate petitioner's position in this matter, that in the opinion of this affiant said affidavits should be considered in conjunction with the proceeding now before this court.

HOWARD D. MOSES.

Subscribed and sworn to before me this
28th day of March, A. D. 1944.

(Notarial Seal) FRANCES DOMSCHKE,
Notary Public.

AFFIDAVIT.

STATE OF OHIO
COUNTY OF CUYAHOGA } ss:

I, E. F. Koenig, of the City of Cleveland, County of Cuyahoga, State of Ohio, Depose and Say:

That I was Treasurer of the Multigraph Company and carried on the principal negotiations with the Jogger Mfg. Co. through its President, R. W. Borrowdale, for the License to manufacture the two sizes of Joggers the Jogger Mfg. Co., was then manufacturing for us; namely, Model #112 and Model #1121 built expressly for our 11 inch #66 Multigraph and our 17 inch #86 Multigraph, respectively.

At Borrowdale's plant in Chicago on February 13, 1931, we discussed the sale of the Patents outright for \$50,000.00 and the alternative, exclusive license to the office appliance field for \$25,000.00, and also the license to manufacture and sell just the two sizes of Joggers; namely, #112 and #1121, then being manufactured for us by Borrowdale's Company. We discussed the M-24 and the Multicolor Type Presses, and since the Jogger #112 built for the 11 inch #66 Multigraph would fit either the M-24 or the Multicolor type presses, the Joggers #112 and #1121 were to be excluded from the manufacture and use on the #M24 and Multicolor Presses.

In Oct. 1930 my Company and the Addressograph Company of Chicago merged. Prior to the merger the Addressograph Company was manufacturing and selling the M24 and Multicolor Presses. After the merger the New Company, The Addressograph-Multigraph Company continued to manufacture and sell the M24 and Multicolor presses, which later was classified as the 5400 Dupligrph, and still later classified as the 1600 Multigraph Press.

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At the time of signing the agreement of August 10, 1931 we did not object to excluding said two sizes of Joggers from use on the M-24 and Multicolor presses, but we did intend to use the said two sizes of Joggers, the 11 inch #112 and 17 inch #1121 for any other Multigraph and Dupligrath equipment we were building or would build in the future that these two specific size Joggers might fit. It was my understanding if additional size Joggers were to be manufactured and sold by us for other equipment manufactured by us from time to time, a new agreement would be entered into between ourselves and the Jogger Company to purchase the right to manufacture and sell such additional size Joggers.

Further Deponent Sayeth Not.

(Signed) E. F. KOENIG

(Notarial Seal)

Subscribed and Sworn to before me this
25th day of January, A. D. 1944 at Cleveland, Ohio.

Margaret E. Evans (Signed)
Notary Margaret E. Evans, Notary Public

My commission expires Mar. 25, 1945.

STATE OF OHIO }
 COUNTY OF CUYAHOGA } ss:

I, W. C. Dunlap, of the City of Cleveland Heights, County of Cuyahoga and State of Ohio, being first duly sworn on oath depose and say:

During 1930 and 1931, I was an officer of the American Multigraph Company of Cleveland, Ohio. This company merged with the Addressograph Company of Chicago in October, 1930. I am familiar with the negotiations leading up to the execution of the license contract of August 10, 1931, between Jogger Manufacturing Company of Chicago, of which Russell W. Borrowdale was president, and the American Multigraph Company.

At the time of negotiations between American Multigraph Company and Jogger Manufacturing Company, we were interested in the manufacturing and sales rights on Borrowdale's No. 112 and No. 1121 joggers for use on Multigraph's No. 66 and No. 86 presses. The No. 112 jogger could be used upon the M-24 and multicolor presses, manufactured by Addressograph Company prior to its merger with American Multigraph Company; and since Borrowdale was not interested in licensing use of the No. 112 jogger on the M-24 or multicolor presses, unless American Multigraph Company paid an additional consideration, final conclusion of negotiations was delayed several months.

It was finally verbally agreed that American Multigraph Company was to have an exclusive license to make and sell the two sizes of Borrowdale's joggers known as Models No. 112 and No. 1121, which he had been manufacturing for American Multigraph Company for some time before. Our understanding was that American Multigraph Company be permitted to use these two sizes on any of its equipment it desired, except the M-24 and multicolor presses. Further, that if additional sized joggers were required by

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American Multigraph Company that a new license would necessarily be required from the Jogger Manufacturing Company to cover such other required sizes. The foregoing verbal understanding was then reduced to writing as expressed in the license contract of August 10, 1931.

At the time of the execution of the contract on August 10, 1931, it was not the understanding of the officers of American Multigraph Company or of Jogger Manufacturing Company that American Multigraph Company could manufacture any other sized jogger embodying Borrowdale's patents; that the only devices discussed and embodied in the license contract of August 10, 1931, were the specific joggers known as model No. 112 and model No. 1121.

Further deponent sayeth not.

(Signed) W. C. DUNLAP

(Notarial Seal)

Subscribed and sworn to before me this
3rd day of March, A. D. 1944, at Cleveland,
Ohio.

Margaret E. Evans,

Notary Public

Margaret E. Evans, Notary Public

My Commission expires March 25, 1945

